

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

OSCAR PEREZ-MARQUEZ,

Petitioner,

v.

JO GENTRY, et al.,

Respondents.

Case No. 2:17-cv-01501-RFB-BNW

**ORDER**

This is a habeas corpus action under 28 U.S.C. § 2254. The court granted leave for prior counsel for petitioner, David Neidert, to withdraw, and the court stayed the action while substitute counsel was located. The court has located and appointed new counsel, Jamie Resch. The court thus will reopen the action.

Respondents' motion to dismiss (ECF No. 81) is pending. Prior counsel did not file a response to the motion before the court allowed him to withdraw. The court will give current counsel time to become familiar with the case. Petitioner then will need to do one of two things. First, petitioner can stand on the current second amended petition (ECF No. 68) and file a response to the motion to dismiss. Second, petitioner can file a motion for leave to file a third amended petition. Petitioner will need to attach a copy of the proposed third amended petition to the motion. LR 15-1(a). If the court grants the motion for leave to amend, then the court will deny the motion to dismiss (ECF No. 81) without prejudice. Respondents then can either file a new motion to dismiss or an answer to the third amended petition.

Based upon the number of exhibits filed, the court foresees the possibility that petitioner might ask for additional time. If petitioner does ask for additional time, then he should, to the best of his knowledge, inform the court in that motion which of the two choices he intends to take.

1 IT THEREFORE IS ORDERED that the clerk of the court reopen this action and lift the  
2 stay.

3 IT FURTHER IS ORDERED that petitioner will have 60 days from the date of entry of this  
4 order to do one of the following: (1) stand on the current second amended petition (ECF No. 68)  
5 and file a response to the motion to dismiss (ECF No. 81); or (2) file a motion for leave to file a  
6 third amended petition, with a proposed third amended petition attached to the motion.

7 DATED: December 2, 2020.

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9 RICHARD F. BOULWARE, II  
United States District Judge